

ADVISORY OPINION 91-19 [1991-11]

By letter dated June 17, 1991, and supplemented by a memorandum dated June 18, 1991, you asked the Ethics Commission for advice regarding your plans to engage in consulting work through your son's company after your retirement from the County.

You have provided the Commission with the following information: Your job with Montgomery County required you to: (a) review plans and plats for technical compliance with the road code and other policies of the Department of Transportation (DOT); (b) coordinate comments from DOT and present them to plan applicants and the Maryland-National Capital Parks and Planning Commission; and (c) coordinate comments from outside agencies such as the State Highway Administration. Occasionally, you have signed permits in the absence of other staff on behalf of DOT. You were not involved in awarding contracts or monitoring contracts within DOT.

You intend to engage in consulting work through your son's landscaping company. You will: (a) assist engineers, developers, and attorneys through the development process; (b) obtain permits including plan approvals and permits from DOT; (c) review plans and permits intended to be submitted to Montgomery County and the MNCPPC; (d) conduct surveys under your professional land surveyor's license; and (e) engage in general landscaping work.

Section 19A-13(b) of the Montgomery County Public Ethics Law states:

"For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

- (1) significantly participated in regulating the person or business; or
- (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility)."

The language of Section 19A-13(b) clearly indicates that this application is limited to an employment understanding with a person or business that is presently contracting with a County agency. Accordingly, you may provide consulting services through your son's landscaping business to engineers, developers, and attorneys with regard to the development and permitting process if those clients are not currently contracting with the County agency.

If you intend to take on as a client an entity that is contracting with a County agency, the Commission believes that you must first request a waiver from the Commission. In order to grant a waiver from Section 19A-13(b), the Commission must find:

- “(1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.”

This letter confirms the oral advice already given to you. If you have any questions regarding this advice, please contact the Commission.

Date of Issue: 8/13/91